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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

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No. 77-1497

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STATE OF ARKANSAS, *Petitioner*,  
v.  
LONNIE JAMES SANDERS, *Respondent*.

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**ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ARKANSAS**

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**BRIEF FOR RESPONDENT**

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### BRIEF FOR RESPONDENT

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#### I. OPINION BELOW

The opinion of the Supreme Court of Arkansas is reported at 262 Ark. 595, 559, S.W.2d 704 (1977) and is attached in the Appendix prepared by Petitioner.

#### II. JURISDICTION

The respondent concurs with the petitioner's jurisdictional statement.

### III. QUESTIONS PRESENTED

The Arkansas Supreme Court correctly held that respondent's expectation of privacy in the contents of his luggage in the trunk of the cab should have required the procurement of a search warrant prior to the search.

### IV. CONSTITUTIONAL PROVISION INVOLVED

The respondent concurs with the petitioner that the Fourth Amendment to the Constitution of the United States is the appropriate constitutional section at issue herein.

### V. STATEMENT OF THE CASE

The respondent concurs with the statement of the case presented by the petitioner with the following exception. In the petitioner's Statement of the Case, petitioner indicates that Sanders and Rambo were not placed under arrest until the suitcase was searched. Detective Isom's testimony indicates the Mr. Rambo and Mr. Sanders were arrested at the time the cab was stopped. (T.28)

### ARGUMENT

**The Arkansas Supreme Court Correctly Held That Respondent's Expectation Of Privacy In The Contents Of His Luggage In The Trunk Of The Cab Should Have Required The Procurement Of A Search Warrant Prior To The Search.**

Should the car search exception to the warrant requirement extend to the seized closed personal luggage of an arrestee found in the trunk of a cab or should the arrestee's expectation of privacy in the contents of his suitcase require the procurement of a search warrant? The issue before the Court is a predictable and inevitable confrontation between the car search exception to the warrant requirement announced in *Carroll v. United States* 267, U.S. 132 (1925) and the holding in *United States v. Chadwick*, 433 U.S. 1 (1977) requiring the issuance of a search warrant before police entry into a footlocker held in police custody.

Initially it should be remembered that *Carroll, supra*, announced an exception to the warrant requirement based on practicalities arising from the mobility of the automobile and the fleeting opportunity to search. Therefore, an immediate roadside search of the vehicle of an arrestee is justified where probable cause exists. However, *Carroll, supra*, was and remains an exception to the warrant requirement.

In *Coolidge v. New Hampshire*, 403 U.S. 443 (1971) a case in which the Court evaluated a warrantless pro-



bable cause search of an automobile, the Court noted that "the word automobile is not a talisman in whose presence the Fourth Amendment fades away and disappears". In reviewing the warrant requirement in *Coolidge, supra*, at 455-456 the Court stated:

"Thus the most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by Judge or Magistrate are *per se*, unreasonable under the Fourth Amendment subject only to a few specifically established and well delineated exceptions.' *Katz v. United States*, 389 U.S. 347, 357. The exceptions are 'jealously and carefully drawn', *Jones v. United States* 357 U.S. 493, 499, and there must be 'a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative.' *MacDonald v. United States* 335 U.S. 451, 456. 'The burden is on those seeking the exemption to show the need for it.' *United States v. Jeffers*, 342 U.S. 98, 51. In times of unrest, whether caused by crime or racial conflict or fear of internal subversion, this basic law and the values it represents may appear unrealistic or extravagant to some. But the values were those of the authors of our fundamental constitutional concepts. In times not altogether unlike our own they won by legal constitutional means in England and by revolution in this continent - a right of personal security against arbitrary intrusion by official power. If times have changed reducing every man's scope to do as he pleases in an urban and industrial world, the changes have made these values served by the Fourth Amendment more, not less important."

The Court's recognition of the continuing vitality of the majority's analysis in *Coolidge, supra*, appears in the language of *Mincey v. Arizona*, 98 S. Ct. 2408 at 2414 (1978), a case in which the Court rejected a "murder scene exception" to the warrant requirement.

"Moreover, the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment. The investigation of crime would always be simplified if warrants were unnecessary. But the Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the law. For this reason warrants are generally required to search a person's house or his person unless 'the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.'"

It must, however, be noted that the United States Supreme Court has upheld warrantless automobile searches based upon pragmatic reasons where the chances of removal of the vehicle or destruction of evidence were remote. In *Chambers v. Maroney*, 399 U.S. 42 (1970), the Court held that a police officer with probable cause to search an automobile at the scene where it is stopped may later do so at the station house without first obtaining a warrant. There was a justification for the delayed search in *Chambers*,

*supra*, in that the occupants in the car were arrested in a dark parking lot in the middle of the night and a careful search at that point was impractical and perhaps unsafe for the officers. *Chambers, supra*, at 52 n. 6. Nothing in *Chambers, supra*, suggests that the officers could search a suitcase clearly utilized as a repository of personal effects without first procuring a warrant.

In *South Dakota v. Opperman*, 428 U.S. 364 (1976) the Court refused to suppress evidence seized during the course of a standard warrantless inventory search of the defendant's automobile after it had been lawfully impounded. That search which was characterized as common police practice throughout the country was justified on the grounds that the inventory (1) protects the owners property while in police custody, (2) protects the police against claims or disputes over stolen property and, (3) protects the police from potential danger. *Opperman, supra*, at 370. In *Cady v. Dombrowski*, 413 U.S. 433, (1973) the Court approved a warrantless search of the defendant's automobile taken to a garage although no probable cause existed to believe that the vehicle contained contraband or evidence of a crime. The search was upheld since it followed standard police procedure incident to the caretaking function of the local police to protect community safety. In *Cady, supra*, the local police reasonably presumed that a revolver would be found in the vehicle in that they believed that the owner, a

Chicago police officer, was required to carry his weapon at all times.

Although warrantless searches absent exigencies were permitted in *Opperman, supra*, and in *Cady, supra*, those cases do not suggest that the police in conducting such searches are authorized to inspect suitcases or luggage which could be removed and stored without further intrusion. See, *Opperman, supra*, dissenting opinion at 388 n. 6.

Since the decision in *Chadwick, supra*, several cases have arisen in the United States Circuit Courts of Appeal presenting similar issues to those raised herein.

In *United States v. Schleis*, 582 F.2d. 1166 (8th Cir. 1978) the Eighth Circuit reconsidered the warrantless search of a briefcase seized from the defendant at time of arrest. The briefcase was searched after the defendant had been placed in a cell. The case has been remanded for further reconsideration in light of *Chadwick, supra*. *Schleis v. United States*, 433 U.S. 905 (1977). The Eighth Circuit concluded that there was no reason to believe that any evidence might be destroyed or that the briefcase contained explosives or other dangerous instrumentalities and, therefore, the warrantless search of the briefcase violated the Fourth Amendment. The Court found that by placing his personal effects inside a combination locked briefcase, Schleis clearly, in the language of *Chadwick*, 'manifested an expectation that the contents would remain free from police examination.' *Schleis, supra*,



at 1170. The Court also noted that the seizure of the briefcase at the time of the arrest was sufficient to place the property within the officer's exclusive control, therefore, triggering the warrant requirement. *Schleis, supra*, at 1172.

Then in *United States v. Stevie* and *United States v. Reynolds*, 582 F.2d 1175 (8th Cir. 1978) the same Court applied the warrant requirement to luggage seized in a probable cause search of an automobile and found in the trunk. There, DEA officers went to the St. Paul Airport and watched the defendants as they rented a car, placed their bags in the trunk and drove away. After pulling the defendants over, the officers detected the odor of marijuana inside the auto. The defendants were removed from the car and placed under arrest. The officers then seized the suitcase placed on the rear floor of the stationwagon. Since the suitcase seized by the officers was clearly within their exclusive control, the Court held that the defendants' expectations of privacy to the contents of the luggage required the procurement of a warrant.

A contra position was taken by the Ninth Circuit in *United States v. Finnigan*, 568 F.2d 637 (9th Cir. 1977) where the *Carroll* exception was held paramount and justified the search of a suitcase found in an automobile where probable cause existed to search the car. The Ninth Circuit found that, "A close reading of *Chadwick* shows that that case was concerned with the creation of a whole new class of objects to be excepted for the general proscription against war-

rantless searches rather than with the scope of the automobile search exception." *Finnigan, supra*, at 640.

The Fifth Circuit has dispensed with the warrant requirement in post-*Chadwick* auto luggage search cases if the exigencies of the situation justify proceeding without a warrant. In *United States v. Fontecha*, 576 F.2d 601 (5th Cir. 1978), a border agent stopped defendant's car four miles from his check point on a deserted road. After detecting the odor of marijuana he searched defendant's luggage. The Ninth Circuit found that the transportation of luggage in an automobile does not *per se* constitute exigent circumstances justifying a warrantless intrusion. But the factors surrounding Fontecha's arrest and the probable cause search on a deserted road justified the procedure on that occasion.

The events surrounding the search in the instant case are as follows. David Isom, a detective for the Little Rock Police Department received information from a reliable informant that Lonnie Sanders would be arriving at the Little Rock Airport with a green suitcase full of marijuana. (T.26) Acting on that information Detective Isom proceeded to the airport with Officers Mize and Tuck. (T.27) Mr. Sanders deplaned and was observed immediately by Detective Isom. (T.27) Sanders was then followed through the terminal where he met Mr. Rambo. Sanders picked up a green suitcase and gave it to Rambo. (T.28) Sanders then left and entered a taxi cab. Rambo waited until

the crowd dispersed and then went to the taxi. Rambo placed the suitcase in the trunk of the cab. (T.28) The cab left the airport and Isom and Tuck radioed ahead to a black and white which pulled the cab over. (T.49) Isom and Tuck arrived, arrested Sanders and Rambo, seized the green suitcase from the trunk of the cab, opened the suitcase and discovered ten pounds of marijuana. (T.28) Mr. Sanders, Mr. Rambo and the suitcase were taken to the station house. The cab driver and the cab were released.

The Fourth Amendment "protects people not places" and safeguards their legitimate expectations of privacy against unreasonable government intrusion. *Katz v. United States*, 389 U.S. 347 (1967). Therefore, in entering the Fourth Amendment analysis in the instant case one should focus primary attention not on the objects involved, a cab and a suitcase, but on the privacy interest of the passenger. "Insofar as the Fourth Amendment protects and extends to motor vehicles, it is the right to privacy that is the touch stone of our inquiry." *Cardwell v. Lewis*, 417 U.S. 583, 591 (1974).

The Court has once announced that a lesser expectation of privacy attaches to the automobile than to a citizen's home. "It's function is transportation and it seldom serves as one's residence or as the repository of personal effects" and "its occupants and its contents are in plain view." *Cardwell, supra*, at 590. However, that language in *Cardwell, supra*, was unnecessarily broad and not entirely accurate. *Cardwell*

dealt with a warrantless probable cause seizure of paint scrapings from the exterior of an automobile. It is of course correct that the automobile exterior and portions of the interior which are readily visible through the glass and doors exhibit little if any expectation of privacy. It is also correct that police stop and examine vehicles on a daily basis to check the license plates, inspection stickers, and equipment. See, *Cady, supra*, at 441 and *Opperman, supra*, at 368. However, it is not the automobile which is at issue herein, it is the expectation of privacy to the contents of the suitcase, a repository of personal effects often carried in an automobile. That distinction was recognized in *Chadwick, supra*, "Unlike an automobile whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile." It cannot logically follow that the expectation of privacy is diminished by placing luggage in the trunk of a car. If anything, a greater expectation of privacy is demonstrated by taking the closed luggage and placing it in an enclosure locked for protection.

Given the existence of a reasonable expectation of privacy in the contents of a suitcase, what justification does the State present for the warrantless intrusion?

The burden rests upon the State to prove "... the exigencies of the situation made that course imperative." *MacDonald, supra*. The State vigorously



argues that the warrantless seizure of the cab was justified by the exigencies of the moment. Petitioner then reasons that it necessarily follows that the warrantless search of the suitcase was reasonable as the "fruit" of the acceptable seizure of the automobile. (Petitioner's brief at 24). That conclusion is reached without a demonstration that an immediate warrantless search of the suitcase was necessary. The suitcase was removed from the trunk of the cab and was clearly in the possession of the officers. Sanders and Rambo were in custody and obviously under the control of the three Little Rock Police Officers. There is no contention that the suitcase was within the "wingspread" of the defendants such that they might reach the suitcase to obtain a weapon or destroy evidence. Therefore, the search incident to arrest exception to the warrant requirement that is reviewed in *Chimil v. California*, 395 U.S. 752 (1971) is not at issue. There simply were no exigent circumstances requiring an immediate search of the suitcase. Petitioner does not and cannot contend otherwise. Further, there was no reason to believe that the suitcase contained any inherently dangerous instrumentality.

It should be noted before proceeding further that respondent does not contend that automobile compartments such as locked trunks, glove boxes, and consoles cannot be searched without a warrant. Obviously these areas exhibit an expectation of privacy but they are part of the automobile and incapable of independent police seizure. If the car leaves, the glove

box leaves and the mobility rational of *Carroll, supra*, may well justify warrantless inspection with probable cause of the enclosures. The Court need not reach that issue herein, the distinction between the glove box and the suitcase is apparent.

The State also attempts to justify the warrantless search in that the weekend was approaching and it would have been difficult to find a magistrate. That seems to be little or no excuse since the suitcase could have been seized and held until the magistrate was found. Further, Sanders and Rambo could have been arrested and charged at that point. The same probable cause for the search would have constituted reasonable casue for their arrest. See, *Ark. Rules Crim. Pro.* Rule 4.1.

Amicus, Americans for Effective Law Enforcements, Inc. extend the argument of the state and make a rather paternalistic assertion that it is best for the citizen if we allow luggage searches at the scene of the arrest thereby avoiding a great deal of inconvenience if no contraband or other evidence of a crime is discovered. It is neither Amicus nor the Court's place to decide whether procurement of a warrant would "inconvenience" the passengers or driver of the vehicles. It should be remembered that the citizen can consent to an immediate search. The decision as to whether the citizen will be "inconvenienced" should be left with the citizen.

Further, Americans for Effective Law Enforcements, Inc., argues that officers have an absolute need to conduct a contemporaneous search of luggage. Amicus argues that a failure to extend the car search exception to suitcases found in an automobile will hamper law enforcement. Brief of Americans for Effective Law Enforcement, Inc., as Amicus Curiae at 8. That argument has been often heard. As the Court pointed out in *Chadwick, supra*, the warrant provides for the "detached scrutiny of a neutral magistrate which is a more reliable safeguard than the hurried judgment of law enforcement officers engaged in the often competitive enterprise of feretting out crime". *Johnson v. United States*, 333 U.S. 10, 13-14 (1948). Further, as the Court reminded us in *Mincey, supra*, fundamental constitutional rights will not be compromised for the sake of simplifying law enforcement.

It should be noted that the dissent in *Chadwick, supra*, takes the position that the proper seizure of the luggage may by itself render the subsequent warrantless search constitutionally permissible. Further, the dissent there argues that warrants are usually forthcoming in these situations and the formality of procuring a warrant would not have "much practical effect" in protecting Fourth Amendment values.

The seizure of the suitcase obviously interferes with an individual's possessory property rights. But the property rights are not the crux of the Fourth Amendment. It is rather the individual's privacy rights. The majority points out in *Chadwick, supra*, that the prin-

cipal privacy interest is not in the container itself but its contents. The search of the contents of the footlocker in *Chadwick* were there characterized as "... a far greater intrusion into Fourth Amendment values than the impoundment of the foot locker".

It may well be that warrants are usually forthcoming in these cases and the formality of warrant procurement would not have much practical effect. However, it has not been this attorney's experience that warrants would have been readily issued upon the reasons announced by Officers in numerous car search incidents. However, even if warrants would be generally forthcoming in these cases, the argument of the dissent in *Chadwick* is an argument of pragmatics and does not directly deal with the Fourth Amendment maxim that any warrantless search must be justified as "imperative" or "compelling".

In summary, the car search exception to the warrant requirement should not be extended to suitcases or other similar containers which by their nature indicate to the police officers that they are a repository of personal effects and that the owner does not expect the contents to be probed without his permission or without a warrant. Suitcases can be easily and readily seized by law enforcement officers and secured at the station house until a warrant is procured. The basis for the *Carroll, supra*, exception to the warrant requirements is inapplicable to luggage. An automobile is mobile and the chance for search fleeting, the suitcase is powerless to transport itself and the opportuni-

ty to search lasts as long as the police desire to keep the item in their possession. To extend *Carroll, supra*, to justify the search of the suitcase in the instant case would extend the exception past the rational which gave it birth. The Court should continue to recognize that the expectation of privacy is the key to the warrant requirement in Fourth Amendment analysis and hold that consideration paramount unless overcome by a compelling demonstration of exigencies by the State. As was stated by the dissent in *Chadwick, supra*, "Criminal law necessarily involves some line drawing." It does, and the line drawn for extension of the Carroll doctrine should be here. The state has not justified the warrantless search and the decision of the Arkansas Supreme Court suppressing the evidence found in the suitcase should be affirmed.

### CONCLUSION

For the reasons stated above the decision of the Arkansas Supreme Court at 262 Ark. 595, 559 S.W.2d 704 (1977) should be affirmed.

Respectfully submitted,

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